



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF O-F-O-

DATE: JUNE 20, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a guidance and counseling graduate student, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner contends that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was "a doctoral student in the Department of Counseling and Educational Psychology at [REDACTED] - [REDACTED]. In addition to pursuing her Ph.D., she was working in the aforementioned department as a graduate teaching assistant and research assistant.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that she intends to continue her "research and work in the field of Counseling and Educational Psychology." She further states: "My current research focuses on studying familial risk factors for academic achievement to reduce the dropout rate in the United States. Long term, my research goal is to conduct a comprehensive study to explore conflict resolution among separated couples." The Petitioner explains that her current and future research is aimed at "career counseling in making life changing decisions and career options among undergraduate students; family conflict resolutions; and advance stress and psychological management."

With the appeal, the Petitioner offers articles that discuss the need for counseling services in the United States, unmet treatment needs for those with mental disorders, the quality of care in our country for depressive and anxiety disorders, and the economic burden to our nation of those suffering from depression. The record also includes a research article describing the benefits of career counselors in building strategic partnerships between individuals and their employers. In addition, the Petitioner submits a research study indicating that "counseling rapport is a vital part of the therapeutic process and helps explain why and when treatment is effective." We find that the Petitioner's proposed research and work in the field of counseling and educational psychology has substantial merit.

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The record reflects that the Petitioner received a master of science degree in counseling and guidance (August 2016) from [REDACTED]

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of her work. In addition to the articles described above, her evidence includes letters of support from [REDACTED] faculty discussing the potential benefits of her research aimed at reducing student dropout rates. For instance, [REDACTED] professor and chair of the Department of Counseling and Educational Psychology at [REDACTED] discusses the potential of such research to “contribute to the reduction of dropout rates in the United States.” Similarly, [REDACTED] Director of [REDACTED] Counseling and Training Clinic, asserts that “the importance of further research to reduce the rate of dropout in the United States to the barest minimum cannot be over-emphasized.” In addition, the Petitioner has submitted documentation indicating that the benefit of her proposed research has broader implications for the field, as the results are disseminated to others in the field through education journals and conferences. As the Petitioner has documented both the substantial merit and national importance of her proposed research, we find that she meets the first prong of the *Dhanasar* framework.<sup>4</sup>

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner’s qualifications. The Petitioner maintains that her clinical experience offering guidance and counseling to students, graduate teaching duties, and university research projects render her well positioned to advance her endeavor. As previously noted, the Petitioner’s clinical and teaching duties do not meet the first prong of the *Dhanasar* framework, therefore our analysis under this prong will focus on whether she is well positioned to advance her proposed research.

The Petitioner submitted documentation of her article in [REDACTED] three conference presentations, professional memberships, academic credentials, and a [REDACTED] recognition certificate.<sup>5</sup> She also offered reference letters discussing her counseling training, clinical work with students, and research projects.<sup>6</sup>

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<sup>4</sup> With regard to the Petitioner’s counseling services and teaching assistant duties, while these endeavors have substantial merit, the record does not establish that such clinical and instructional work would impact the counseling and educational psychology fields and mental health industry more broadly, as opposed to being limited to the clients she serves and her students. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s clinical work as a counselor and instructional activities as a teaching assistant do not meet the “national importance” element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

<sup>5</sup> The Petitioner’s [REDACTED] certificate states that she “has been elected in recognition of merit and accomplishment as a student at [REDACTED]. In addition, she asserts that she was “one of just four individuals selected out of the 53 Counseling and Guidance Students” at [REDACTED]. The record, however, does not show that selection for this student honor at her university represents a record of success in her field or that it is otherwise an indication that she is well positioned to advance counseling and educational psychology research.

<sup>6</sup> We discuss only a sampling of these letters, but have reviewed and considered each one.

With respect to her research aimed at reducing student dropout rates, the Petitioner asserts that “she has influenced and inspired others for the advancement of the greater industry.” In letters supporting the petition, several of the Petitioner’s professors discussed her research that focused on stress factors experienced by international students. For example, [REDACTED] associate professor of counseling at [REDACTED] mentions the Petitioner’s article in [REDACTED] and asserts that her “research has had the subjective effect of helping our university administration look carefully at the variety of stressors facing international students and how to provide adequate mental health support for depression, separation anxiety, and other psychological issues for this most vulnerable population.” In addition, [REDACTED] associate professor and coordinator of the Counseling and Guidance Program at [REDACTED] states that the Petitioner’s “research provided unique and valuable information that is currently being used by the faculty members to provide adequate emotional and mental health support for newly admitted students. Her research has provided strategies for students to recognize and manage feelings of stress.” Although faculty from [REDACTED] note that the Petitioner’s research has been helpful to her alma mater, the record does not adequately document that her strategies stand to be utilized beyond this single university.

Regarding the Petitioner’s research projects at [REDACTED] indicates that “[s]he has done intensive background research on why the dropout rate is at 41 percent in public schools, and provided recommendations that can reduce this rate to a minimum.” Furthermore, [REDACTED] states that the Petitioner examined “how parental activities have great impact on the academic performance of children” and “recommended parental practices that will reduce the rate of drop out.” [REDACTED] notes that the Petitioner presented this work, entitled “Familial Risk Factors for Academic Issues,” at the [REDACTED] 3rd Annual Conference in February 2017, but this conference post-dates the filing of the petition. See 8 C.F.R. § 103.2(b)(1), (12). Regardless, we do not find that presentation of her work alone is sufficient to establish that the Petitioner is well positioned to advance her proposed research.

The record demonstrates that the Petitioner has conducted, published, and presented research during her graduate studies at [REDACTED] and [REDACTED]. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner has not shown that her research has been frequently cited by independent scholars or has otherwise served as an impetus for progress in the field, that it has affected clinical practice, or that it has generated substantial positive discourse in the broader academic community. Nor does the evidence otherwise demonstrate that her work constitutes a record of success or progress in her area of research.

In sum, the Petitioner has not demonstrated a record of success or progress in her field, or a degree of interest in her work from relevant parties, that rise to the level of rendering her well positioned to advance her proposed research endeavor. As the record is insufficient to demonstrate that the

Petitioner is well positioned to advance her proposed endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that she is eligible for a waiver due to her unique knowledge, skills, and research accomplishments, and based on "urgent concerns" that "are crucial to our economy, education and individual emotional health." However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of O-F-O-*, ID# 1392375 (AAO June 20, 2018)